Filed 10/22/12 In re C.J. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.J. et al, Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Plaintiff and Respondent, v. D.J. et al., Defendants and Respondents. C.J. et al., Appellants.	E055314 (Super.Ct.Nos. J240362, J240363, J240364 & J240365) OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Appellants.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and Respondent D.J.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Respondent C.W.J.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

Minors C.J., twins P.J. and E.J., and M.J. appeal from the juvenile court's orders pursuant to Welfare and Institutions Code section 361.5,[1] granting reunification services to their parents, D.J (Mother) and C.W.J. (Father). We affirm.

I. PROCEDURAL BACKGROUND AND FACTS

On August 18, 2011, four-month-old C.J. was seen at the Naval Hospital due to a fussy temperament and swelling of his shoulder. X-rays showed a left clavicle fracture, left digital radius fracture, left ulna fracture, and T-12 vertebra possible compression fracture. The child was transferred to Loma Linda Medical Center for further evaluation, where other fractures in their healing stages were discovered.

Special Agent Bruce Rogers with the Naval Criminal Investigative Service (NCIS) interviewed Father that day. At the conclusion of the interview, Father signed a written statement admitting he had used more force with C.J. than was necessary and that he believed he accidentally caused the child's injuries. Father admitted causing C.J. to cry

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

out in pain five or six times because of the force with which he handled him. Father described how he typically removed C.J. from his crib or car seat with one hand, with his thumb in the armpit and fingers holding the child's shoulders. Once, when Father nearly dropped the child after pulling him out of his car seat, Father grabbed him by the wrist to stop his fall, and C.J. cried for a minute or two. Father said he used more force than necessary out of frustration, not anger. He did not tell Mother about his frustration because he was afraid she would think less of him.

On August 22, 2011, the San Bernardino County Children and Family Services (CFS) filed juvenile dependency petitions on behalf C.J. and his siblings, P.J., E.J., and M.J., pursuant to section 300, subdivisions (a), (b), (e), and (j), and removed them from their parents' home. At the time of the filing, C.J. was four months old, P.J. and E.J. were three years old, and M.J. was 5 years old. On the next day, the trial court found prima facie evidence for detaining the children out of their home.[2] The petitions were later amended to delete "possible compression fracture of T-12 vertebra" from the list of injuries in the allegations and to remove "suggested" that was preceding "healing of 6 through 10 posterior left rib fractures . . . ."

In the jurisdiction/disposition report filed on September 8, 2011, CFS recommended that the children remain in out-of-home placement and that the parents not be offered reunification services. According to the report, Mother stated she had hired a

[2] C.J. was brought under the jurisdiction of the trial court pursuant to section 300, subdivisions (a), (b), and (e), while his siblings were brought under the court's jurisdiction pursuant to section 300, subdivisions (b) and (j).

private attorney and had been advised not to discuss the allegations regarding C.J. with anyone. Mother admitted being the primary caretaker of C.J.; however, she denied knowledge of how C.J. was injured and previously suggested the seatbelt might have been the cause when they almost got into a car accident. Mother said the children loved Father, and she could not believe he would intentionally hurt them. The social worker opined that Mother's denial might mean that she would not be able to protect her children from Father. Mother agreed to contact the family advocacy program to begin parenting classes and individual therapy.

The social worker interviewed Father, who denied noticing any injuries or bruises on C.J. or signs that he was in pain or unhappy prior to August 18, 2011. Father denied having anger issues or reporting to Agent Rogers the incidents in which he flung C.J. from the crib to the bed and had used excessive force with the child. Father denied suffering from sleep apnea or insomnia, explaining that because he worried about Mother's sleep apnea, he stayed awake for most of the night watching over her and the children. Father said they were a very united family, explaining they did everything as a family and that he needed his family to feel complete. Father's answers to the social worker's questions were inconsistent with his statements at the time he took C.J. to the hospital. For example, Father reported that C.J. had been fussy for four days and that his shoulder was swollen for one day, while he told the social worker that he never saw swelling until Mother pointed it out.

The report noted that P.J. and E.J. were "not very verbal to answer direct questioning." M.J. reported that Mother and Father punished him by hitting him with a

belt; however, he denied that they used any other forms of corporal punishment or that they used such punishment on C.J. CFS noted the children appeared comfortable around their foster parents. Dr. Clare Sheridan-Matney,[3] the chief of the forensic pediatrics division, the medical director for the Children's Assessment Center (CAC), and the medical director for the Riverside Regional Medical Center child abuse program, reported C.J.'s injuries to be highly suspicious of abuse. While the parents refused to discuss with the social worker the issues surrounding C.J.'s injuries, they were compliant and eager to cooperate and access services. Nonetheless, the social worker concluded that while "the parents have accessed services, are compliant and eager to cooperate with CFS, how they will benefit from such services is unknown. The likelihood of this family reunifying is extremely poor at this time."

On September 13, 2011, the parents informed the court that they had retained private counsel, and the court continued the jurisdiction/disposition hearing to give counsel time to review the case.

In the addendum to the jurisdiction/disposition report filed on September 26, 2011, it was noted that the CAC conducted interviews with the children on September 23. M.J. "reported being 'beaten' by both his mother and father" with a brown belt on his bare and clothed buttocks, hands, front and back of his legs, and neck, leaving red marks. He stated Mother slapped him, and Father left marks when he punched him with a closed fist on his chest. He said, "Mommy's beating hurts the most and daddy's happens more

[3] Some places also referred to her as Dr. Sheridan and others as Dr. Matney.

times." He shifted between calling his parents "mommy" and "daddy" and "Mr. C[.]" and "Miss D[.]" He claimed that his parents fought "'all the time.'" He said they "hit each other, yell and argue." If he could talk to them, he would ask them "'[n]ot to beat me all the time. It hurts me.'" He liked his foster parents, who sent him to his room instead of using corporal punishment.

E.J. described how he was "beaten" with the brown belt on his buttocks. Mother slapped his legs and hands and Father "yell[ed] a lot." He witnessed M.J.'s beatings and saw Mother "popping" C.J. He demonstrated how Mother "pops" C.J. by hitting the interviewer on her hand. P.J. demonstrated how Mother and Father hit her brothers with the brown belt on the doll she was playing with, after removing its pants. She denied that Mother and Father hit her, but, when asked if she had ever gotten an "'owie'" she answered, "'I do when I get beaten.'"

The social worker opined that the parents were not being open or honest about their family dynamics, and Father was most concerned with Mother's opinion of him. Because the parents were being advised not to speak to anyone about the case, the social worker observed it was difficult to determine how the family could be serviced and ultimately helped.

On September 29, 2011, Mother and Father denied the allegations in the first amended petition, and the court set the matter contested. On November 1, the court received and attached to the September 13, 2011, addendum report a forensic consultation report that indicated child abuse was the most likely cause of C.J.'s injuries.

A second addendum to the jurisdiction/disposition report was filed on November 4, 2011. The social worker had visited the three oldest children in their foster home on October 21, and they said they were happy. They loved their foster mother's food and recited a psalm in Spanish. The social worker met with Agent Rogers on October 26, during which time she read the written report and viewed the digital video disc (DVD) of the parents' interviews from August 18. The report expressed concern that Mother was more protective of Father than of her children. On November 3, the social worker met with Dr. Sheridan-Matney, who stated that C.J. did not have brittle bone syndrome or a metabolic disorder. Rather, his fractured clavicle was consistent with a blunt force trauma. His elevated levels of liver enzymes suggested he sustained a blunt force trauma to the abdomen. The injuries could not have occurred from the "almost" car accident related by Mother. Attached to the second addendum were the medical reports from the examinations performed on the three oldest children by Dr. Mark Massi on October 26. It was noted that M.J. had a single curvilinear scar on his left arm that was "suspicious for an inflicted injury." The addendum concluded it was not safe for the children to return home.

At a jurisdiction hearing, Dr. Sheridan-Matney testified as to C.J.'s injuries. When she asked Mother how the child was injured, Mother claimed ignorance, suggesting it could have resulted from a near-miss car accident that had caused her to stop short while driving 65 miles an hour. The doctor opined that Mother's story of the accident was suspect, because the child's car seat faced the rear and she did not believe the strap could cause that kind of injury. Instead, Dr. Sheridan-Matney opined that the

left clavicle fracture resulted from a blunt-force trauma, such as by someone squeezing or punching the clavicle. It was acute and occurred one to four days before C.J. was seen at Loma Linda. The fractures in the radius and ulna of C.J.'s wrist could have occurred by pushing his hand forward with force, and C.J. could not have done it to himself. The child's rib fractures were approximately three to five weeks old and could only have been fractured by "squeezing to beyond the resistance of the ribs . . . ." C.J. would have been in such intense pain that he would not have cried out, but gasped, and then continued to breathe shallowly. Also, these injuries could not have occurred during C.J.'s birth because of the quick rate at which infants of his age heal. The doctor testified that C.J. did not have brittle bone disease; however, he did have elevated liver enzymes commonly seen in battered children or caused by trauma. She opined that C.J. was the victim of physical abuse.

On November 7, 2011, the court found true the allegations, as amended, in the petitions, and thus found jurisdiction over C.J. based on section 300, subdivisions (a), (b), and (e), and over the other children based on subdivisions (b) and (j). On December 1, 2011, Mother and Father completed parenting classes; however, as of December 2, Father had still failed to start individual therapy.

CFS filed a third addendum report on December 7, 2011. The social worker had visited the parents on November 10. Mother continued to deny Father could have hurt the children, claiming he confessed to Agent Rogers because he was told the children could go home if he did so. Mother said the children cried and held onto the parents at the end of their weekly visits, asking why they could not go home. The foster father

opined that the children cried at the end of the visits because Mother told them they were going home soon but they had not yet done so. The children missed their parents but also liked their foster parents. E.J. and P.J. were very excited to see Mother and Father, while M.J. was more reserved. C.J. was too young to express emotion, but he seemed comfortable around Mother and Father. The social worker noted the children were still attached to their parents, but the bond they had developed with their foster parents showed they could also attach to other loving adults.

The contested disposition hearing was held on December 12, 2011. The social worker testified that she observed a happy, cohesive family unit; the children were positively attached to Mother and Father, but Mother and Father might be concealing information regarding C.J.'s injuries. She stated that the children seemed well adjusted and did not appear afraid of their parents. Nonetheless, she recommended denial of reunification services because of the serious injuries to four-month-old C.J., the reports from two other children of "severe physical punishment and emotional abuse," and the parents' failure to take responsibility. According to the social worker, Mother was concealing information.

Father's supervisor, Staff Sergeant Brian Shelton, testified that he had seen Father with his family two or three times and described him as "loving and caring," "very fond of his kids," and "a 100 percent family man."

Father testified he loved his children and would be deeply hurt if he could not get them back. He said, "Our kids are our heart. Without our kids, we're not a family." He stated he would not use corporal discipline but would employ the methods he had learned

in his parenting classes. He admitted using a belt over the clothes on his older children but denied ever physically hurting them. He continued to deny knowledge of how C.J. sustained his injuries. Although he signed the confession, he did not mean it and only signed it to protect his family. He was currently being counseled by his pastor but was not in individual therapy. Mother testified she used the belt to discipline her three eldest children, explaining, "A beating is just—I use a belt. I make them drop their pants, and give them three whacks with a belt. It was something done to me growing up, and I just kind of used it as disciplinary action for my kids because that is all I know." She said she did not do it often, the children would not cry, and she never left marks. Mother also used other forms of discipline like time outs or taking away a toy. She explained "popping" is when she gives C.J. "a pat" on the buttock, and that it is not disciplinary. She denied that Father struggled with anger issues or hurt C.J. When asked if she knew about "the look" she gives to Father if he handles the children too roughly, she claimed ignorance. Mother stated she is not trying to protect Father and does not believe he poses a physical threat to the children.

A close family friend testified that Mother and Father are good parents who have a significant bond with the children and that she never noticed signs of abuse.

The trial court ordered the children removed from Mother and Father and placed in the care, custody, and control of CFS pursuant to section 300. It ordered reunification services, finding that such services would likely prevent re-abuse and that failure to try reunification would be detrimental to the children because they were positively attached to their parents. A six-month review hearing was set for June 12, 2012.

The children appeal, contending the trial court erred in granting services to the parents. CFS filed a letter brief that joins and adopts the children's opening brief.

II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN ORDERING REUNIFICATION SERVICES?

The minors contend the order providing reunification services to the parents must be reversed. They argue there was insufficient evidence to support the court's finding that reunification was possible if parents were provided services, that denying services would harm the children given their attachment to the parents, and that that the children's best interests would be served by providing parents with the opportunity to reunify with their children.

Courts have broad powers in dependency cases. (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) This includes the broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion, and the court's determination in this regard will not be reversed absent a clear abuse of discretion. (*Ibid*.) Under this standard of review, we will not disturb the decision of the trial court unless the court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

Except as provided in subdivision (b), section 361.5 provides that whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. The juvenile court is thus required to order

family reunification services whenever a child is removed from the custody of his or her parent or guardian, unless the court finds by clear and convincing evidence that one of the 15 exceptions set forth in section 361.5, subdivision (b) applies. (§ 361.5, subd. (a); *In re Albert T.* (2006) 144 Cal.App.4th 207, 217.) In other words, there is a presumption in dependency cases that parents will receive reunification services. (*Riverside County Dept. of Public Social Services v. Superior Court* (1999) 71 Cal.App.4th 483, 487 [Fourth Dist., Div. Two].)

Despite the presumption that services will be provided to a parent or guardian, a juvenile court shall not order reunification services for a parent or guardian described in certain paragraphs of subdivision (b) of section 361.5 unless it finds, by clear and convincing evidence, that "reunification is in the best interest of the child." (§ 361.5, subd. (c).) Under section 361.5, subdivision (b)(6), the juvenile court may also deny services to the nonoffending parent, but only if the court expressly finds that the physical harm to the child was committed "with the consent of the parent or guardian." (§ 361.5, subd. (b)(6).) In any situation described in section 361.5, subdivision (b)(5),[4] the court must also find that the services "are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent." (§ 361.5, subd. (c).) "'Once it is determined one of the situations outlined in subdivision (b) applies, the general rule

[4] "That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian." (§ 361.5, subd. (b)(5).)

favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.'" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744, superseded by statute on another point as stated in *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1457.)

Here, the dependency petition alleged that C.J. "suffered severe physical abuse" by Father and that Mother "should have reasonably known" that C.J. was at a substantial risk for injury in the care and custody of Father. It further alleged that both parents "use exces[s]ive corporal punishment with the children, per the children's own report." Although the juvenile court found the allegations to be true, it stated, "I want the parents to hit the ground running on this. Father made a full confession here. What do you think we are? Idiots? You jump on board with these services here. [¶] . . . [¶] The Court will order services for Mom and Dad. Mom is in denial. [¶] Mom, there was a signed confession by Father. Okay? [¶] . . . [¶] . . . You have to do what is necessary. [¶] Dad, I don't know about you, sir, but you have real issues that you had best address because both of you are going to have six months to get it right, and if you don't, that's going to be it. [¶] . . . [¶] . . . That is the reality of it. [¶] . . . [¶] All right. Just so everyone realizes, this testimony about how you signed a confession and tried to deny it, or 'I was forced to sign it.' Court does find, though, there was bonding here, as [the social worker] has described. [¶] The Court does find that . . . the services that are going to be offered or [*sic*] likely to prevent reabuse or continued neglect of the children, and also that failure to try reunification would be detrimental to the children because they are closely and positively attached to the parents . . . . [¶] But you had best start accepting responsibility

for what has happened and to fully explain to the therapist what happened and why it happened in order to receive the appropriate services to fix this, folks."

While Father was the offending parent, Mother was not. The trial court considered Father's written confession as evidence that he admitted to causing C.J.'s physical injuries. As to Mother, the court's finding that she "should have reasonably known" that C.J. was at a substantial risk for injury in the care and custody of Father is a finding she neglected and failed to protect the child, but it does not overcome the statutory presumption for an award of reunification services. "The Legislature did not intend [section 361.5,] subdivision (b)(6) to apply to deny reunification services to a negligent parent; rather, the parent must have been complicit in the deliberate abuse of the child." (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 843.)

Emphasizing the parents' denial of any knowledge as to how C.J. was injured, the minors argue that the "parents' explanation for the circumstances surrounding the abuse showed a remarkable lack of focus on the children's safety and protection," and they failed to show that the services offered would prevent re-abuse. The juvenile court acknowledged the parents' denial, but that was not the only evidence presented at the hearing. We must review the entire record in considering whether substantial evidence supports the juvenile court's findings. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.) To begin with, the parents have no negative prior history despite the fact that C.J. is their fourth child. The record reflects that none of the three older children displayed signs of severe physical abuse. Although they did not like it when their parents spanked them with the brown belt, they still showed love and a strong bond with Mother and Father.

While both parents claimed ignorance of the cause of C.J.'s injuries, we note Father initially admitted to Agent Rogers that he was too rough in handling C.J., and one month after the children were removed, Mother informed the social worker that she had not spoken to Father, who had moved out of the family home to the barracks on the base. After obtaining counsel, they both were advised against discussing C.J.'s injuries with anyone. While following the advice of counsel hindered the ability of CFS to work with the parents, the record shows they were willing to participate in reunification services. In fact, they enrolled in a parenting class and communicated what they had learned from that class.

While the injuries to C.J. were deplorable, there is no evidence in the record supporting an inference that Father intentionally inflicted the injuries or that Mother was complicit in the abuse of C.J. According to Father's confession, he did "not intentionally hurt [C.J.; however, he did] physically handle [C.J.] much harder and with much more physical force than was necessary to provide him care." He believed that he accidently caused C.J.'s injuries. Further, although the parents used excessive corporal punishment on the older children, the evidence shows the children did not show any signs of severe physical abuse, and after taking a parenting class, both Mother and Father learned other methods of disciplining the children. Given this evidence, the court found that services were likely to prevent future abuse or continued neglect by the parents. However reprehensible we might find the parents' behavior at a critical time, the record supports the finding of the court.

Noting that the juvenile court failed to make an express best interests finding, minors nonetheless argue that reunification was not in their best interests because it is not reasonably probable the parents will be able to resolve their issues within six months such that they could be trusted to protect their children. While it appears the lower court was primarily addressing section 361.5, subdivisions (b)(5) and (c), its findings implicitly conclude that providing services to the parents is in the best interests of the children. In finding that "failure to try reunification will be detrimental to the child[ren] because the child[ren are] closely and positively attached to that parent" (§ 361.5, subd. (c)), the court clearly found that providing services was in the best interests of the children.

As CFS reported in its final addendum report prepared for the December 12, 2011, hearing, "the children said they do miss their parents," E.J. and P.J. are "very excited to see" them, M.J. "appears to be happy to see them[,]" and C.J. "appears comfortable around" them. Based on the record, the court found the children are "closely and positively attached to the parents . . . ." Of the four children, only one suffered physical injuries, which Father stated were not intentional. While Father had not yet seen a therapist recommended by CFS, he did seek counseling from his church pastor. Also, he, along with Mother, participated in and completed a parenting class. The parents continually expressed their love for the children and their willingness to do whatever was necessary to reunite with them. No matter how repugnant the facts of the case may be, without the predicate findings by clear and convincing evidence, the mandatory requirement of providing services to a parent upon the removal of the children under

section 361.5, subdivision (a) applied. We, like the juvenile court, are bound to follow this law, even when faced with egregious facts.

Notwithstanding the above, minors argue that the case of *In re Ethan N.* (2004) 122 Cal.App.4th 55 (*Ethan N.*) "illuminates . . . similar circumstances of severe abuse to a very young child, and whether services should be offered the parent." In *Ethan N.*, one of the mother's children died of suffocation due to a wad of paper lodged deep in his throat. (*Id.* at p. 61.) The child "also had severe injuries to his rectum and anus, 12 broken ribs at various stages of healing, injuries to his face, a torn frenulum, and a contusion to the back of the head." (*Ibid.*) Although the mother did not directly inflict the injuries, she was found to have caused the infant's death due to her neglect. (*Id.* at p. 59.) The lower court granted reunification services, but the appellate court reversed, noting the enormous hurdle a parent faces in seeking reunification with a child after previously causing the death of another by abuse or neglect. The court observed, "The enormity of a death arising out of . . . child abuse swallows up almost all, if not all, competing concerns." (*Id.* at p. 69.) Moreover, the reviewing court found that the lower court failed to apply the correct standards in examining the child's best interests and thus abused its discretion. (*Id.* at p. 68.) Such is not the case before this court.

For the above reasons, the court did not abuse its discretion in granting services.[5]

III. DISPOSITION

The orders granting reunification services are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.

[5] Having affirmed the orders of the lower court, we need not consider parents' claim that minors' counsel "appears to have violated section 317, subdivision (e)" by failing to conduct an independent investigation of M.J.'s wishes. (Capitalization omitted.)